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business. The defendants pleaded the Statute of Frauds. *Held*, that the plaintiffs could not recover. *Burns v. McCormick* (1922) 233 N. Y. 230, 135 N. E. 273.

In equity it is well settled that part performance may take a parol contract for the sale of land out of the Statute of Frauds. COMMENTS (1915) 24 YALE LAW JOURNAL, 426. There are two theories as to the acts of part performance which are considered sufficient to take the contract out of the Statute. The first is embodied in the English rule which requires the acts to be unequivocally referable to the contract, the reason being that the actual contract may be proved if the acts of their own nature point to some contract concerning the land. *Maddison v. Alderson* (1883, H. L.) 8 A. C. 467; Fry, *Specific Performance* (6th ed. 1921) sec. 582. The cases granting relief where possession has been taken pursuant to the oral contract are decided upon this theory, but they are sometimes classed by themselves as an arbitrary exception to the Statute. See (1920) 29 YALE LAW JOURNAL, 462. The second theory is that which usually prompts equity to action, namely, the prevention of irreparable injury and fraud. 5 Pomeroy, *Equity Jurisprudence* (2d ed. 1919) sec. 2239. Cases involving the performance of personal services come under this theory. A few jurisdictions refuse to grant specific performance unless the acts satisfy both theories. See 1 Ames, *Cases in Equity Jurisdiction* (1904) 286, 287, notes. The court in the instant case, following the English rule, denied relief because the acts were not unequivocally referable to a contract concerning the land. The American courts seem to be evenly divided on this question. See Pound, *The Progress of the Law, 1918-1919* (1920) 33 HARV. L. REV. 929, 943. The better view seems to be that specific performance of such contracts should be granted on the ground of "equitable or constructive fraud," in that the plaintiff in reliance on the defendant's promise has so changed his position that he will be irreparably injured. *Taylor v. Holyfield* (1919) 104 Kan. 587, 180 Pac. 208; *Gladville v. McDole* (1910) 247 Ill. 34, 93 N. E. 86. For the same reason some courts grant specific performance of a contract to convey or devise land in those cases where the personal services rendered by a minor are construed as equivalent to adoption. *Steinberger v. Young* (1917) 175 Calif. 81, 165 Pac. 432; Pomeroy, *op. cit.* sec. 2248. Similar conditions have prompted certain courts to grant relief to a licensee who, relying upon a parol license, changes his position. *Rerick v. Kern* (1826, Pa.) 14 Serg. & R. 267; Clark, *Licenses in Real Property* (1921) 21 COL. L. REV. 757, 779. The Statute of Frauds was passed to prevent fraud, not to produce or protect it. The proper solution of the problem seems to lie in the adoption of the "equitable or constructive" fraud theory.

LIBEL—PUBLICATION DUE TO DISCLOSURE BY THE PLAINTIFF.—The defendant sent a sealed letter to the plaintiff, a boy of fourteen, unjustly accusing him of theft. The boy became frightened and showed the letter to his brother and father. The plaintiff sued for libel, and the defendant claimed that such disclosure by the plaintiff did not constitute sufficient publication to support the action. *Held*, that the plaintiff could recover. *Hedgpeth v. Coleman* (1922, N. C.) 111 S. E. 517.

In a civil action for libel, the defamatory words, in order to constitute the necessary element of publication, must be communicated to some person other than the one defamed. Odgers, *Libel and Slander* (5th ed. 1911) 157. A sealed defamatory letter addressed to the plaintiff does not meet this requirement. *Penry v. Dozier* (1909) 161 Ala. 292, 49 So. 909; *Warroch v. Mitchell* (1890, C. C. W. D. Tenn.) 43 Fed. 428. It must also be proved that the publication was the intended or foreseeable result of the defendant's act; there is no publication where the defendant is ignorant of the plaintiff's illiteracy, or of the fact that a

clerk usually opens the plaintiff's letters. *State v. Syphrett* (1887) 27 S. C. 29, 2 S. E. 624; *Sharp v. Skues* (1909, C. A.) 25 T. L. R. 336. Likewise one is free from liability if the plaintiff himself voluntarily and unreasonably exhibits the defamatory letter to a third person. *Lyon v. Lash* (1906) 74 Kan. 745, 88 Pac. 262; *Konkle v. Haven* (1905) 140 Mich. 472, 103 N. W. 850; *Sylvis v. Miller* (1895) 96 Tenn. 94, 33 S. W. 921. But it is uniformly held that there is a publication if the defendant intended or should have foreseen that under the circumstances some third person would read the letter. *Roberts v. Eng. Mfg. Co.* (1908) 155 Ala. 414, 46 So. 752; *Allen v. Wortham* (1890) 89 Ky. 485, 13 S. W. 73; (1916) 25 YALE LAW JOURNAL, 246. In the last analysis, therefore, the underlying question appears to be one of causation. So, in the instant case, it seems to have been properly held that the disclosure was a natural and probable consequence of the defendant's act.

SALES—BUYER'S INSOLVENCY NO JUSTIFICATION FOR SELLER'S BREACH.—Upon the plaintiff's insolvency, the defendant entirely refused to perform his contract to furnish the plaintiff with building materials which were to be paid for as deliveries were made. The plaintiff had also failed to meet other debts which he owed to the defendant. The plaintiff sued for breach of contract. *Held*, that the plaintiff could recover. *Keppelon v. Ritter Flooring Co.* (1922, N. J. L.) 116 Atl. 491.

Insolvency merely relieves the vendor from his agreement to give credit; his duty of immediate performance becomes conditional upon tender of payment. *Pardee v. Kanady* (1885) 100 N. Y. 121, 2 N. E. 885. The existence of other circumstances, however, in addition to the fact of insolvency, may privilege the seller not to perform. For example, where the buyer gave notice to the seller of his insolvency and made no intimation of any intention to enforce the contract, the facts operated as an express abandonment. *Morgan v. Bain* (1874) L. R. 10 C. P. 15; *Hobbs v. Columbia Falls Brick Co.* (1892) 157 Mass. 109, 31 N. E. 756. Inability on the part of the buyer to perform his part of the contract at the time fixed for delivery privileges the seller not to perform. *Diem v. Koblitz* (1892) 49 Ohio St. 41, 29 N. E. 1124. A seller should not be prejudiced, and is therefore under no duty to accept the notes of the assignee for the benefit of the vendee's creditors in place of the vendee's notes. *Rappleye v. Racine Seeder Co.* (1890) 79 Iowa, 220, 44 N. W. 363. Nor is he required to hold the goods for an unreasonable time awaiting the decision of the vendee's receiver in bankruptcy to elect to perform the contract. *Sprague & Warner Co. v. Iowa Mercantile Co.* (1919) 186 Iowa, 488, 172 N. W. 637. The assignees of an insolvent buyer cannot adopt a contract in part where it calls for deliveries over a period of years. *Hanna v. Florence Iron Co.* (1918) 222 N. Y. 290, 118 N. E. 629. Yet it has been held that the seller must perform all conditions precedent to his right to payment. *Gibson v. Carruthers* (1841, Exch.) 8 M. & W. 321. It has been suggested that requiring the seller to make such expensive preparations is an unreasonable hardship if the buyer proves unable to pay. 2 Williston, *Contracts* (1920) sec. 880. Nevertheless, if the vendee's conduct in business discloses the ordinary evidences of insolvency (for example, if his commercial paper is being protested), the seller may exercise the right of stoppage *in transitu*, and may recall the goods unless tendered the purchase price. *Diem v. Koblitz, supra*. It has been argued that since he has this right, *a fortiori* the buyer's insolvency should excuse him from delivering the goods at all. See the dissenting opinion in *Gibson v. Carruthers, supra*. The federal rule is that bankruptcy is an immediate anticipatory breach. *Central Trust Co. v. Chicago Audit. Ass'n.* (1916) 240 U. S. 581, 36 Sup. Ct. 412. Although open to criticism, this rule is at least indicative of an indisposition to require a tender by the solvent party. 2 Williston, *loc. cit.* The decision in the instant case, however, to the effect that the